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ON PAGE **1A**

WASHINGTON TIMES
27 May 1987

Lawmakers sue to kill the Boland Amendment

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THE WASHINGTON TIMES

Two Republican lawmakers, citing a national security threat imposed by Nicaragua's Marxist Sandinista government, asked a federal court yesterday to strike down laws — including the Boland Amendment — that restrict the administration's ability to aid the Nicaraguan resistance.

Republican Reps. Robert K. Dornan, of California, and Dan Burton, of Indiana, argue in a lawsuit filed in U.S. District Court that such restrictions unconstitutionally "inhibit the authority" of the president of the United States.

The suit asks that several key federal agencies — including the CIA,

the Department of Defense and the State Department — be relieved from compliance with various restrictions embodied under the Boland law, named for its sponsor, Rep. Edward P. Boland, Massachusetts Democrat.

In all, there have been five different versions of Boland restrictions, each revised in the period from December 1982 until October 1986.

Mr. Dornan, in a written plea urging other members of Congress to join his legal challenge, drew attention to language in the Constitution directing the president to use funds available to him through various federal agencies to defend and protect the United States from any threat to national security.

"To date, the [Contras] have been one of the few credible deterrents to U.S. military involvement in the region," wrote Mr. Dornan. "Efforts then to restrict U.S. aid to the Nicaraguan resistance dramatically inhibits the president's ability to fully comply with the stated goals of his position and are therefore unconstitutional."

Mr. Dornan went on to describe Nicaragua as a region "dominated by a strong military and political orientation to the Soviet Union and its surrogates, which present a very real national security threat to the United States."

During fiscal year 1985, when many of the events of the Iran-Contra affair transpired, the Boland Amendment spelled out that no funds available to the CIA, Defense Department or any other U.S. agency involved in intelligence activities "may be obligated or expended for the purpose . . . or effect of supporting, directly or indirectly, military or paramilitary operations in Nicaragua by any nation, group, organization, movement or individual."

Controversy arose recently when it was disclosed that Saudi Arabia

and Taiwan in 1984 and 1985 not only made donations to the Contras, but that Mr. Reagan discussed the issue of aid to the Contra forces during a White House meeting with Saudi King Fahd in February 1985.

But a revised version of the Boland Amendment, which took effect in December 1985, specifically permitted third-country solicitations.

Although Mr. Reagan has denied actually soliciting aid, the White House said last week it never considered it illegal to seek aid for the Contras from other countries.

"None [of the Boland restrictions] contained any language which limited the constitutional and historical power of the president to conduct foreign policy," said White House spokesman Marlin Fitzwater, reading a prepared statement from the White House counsel's office.

Although the Boland Amendment carries no penalties against violators, Lawrence Walsh, the independent counsel charged with investigating the Iran-Contra affair, is reported to be considering whether its violation could constitute illegal activity under federal conspiracy laws.

To draw attention to their lawsuit, Messrs. Dornan and Burton named Mr. Reagan, whom they are trying to help by their action, as one of four defendants, along with the secretaries of state and defense and the director of central intelligence.

"The president has publicly announced . . . and executed a national defense policy . . . opposing the Soviet- and Cuban-backed campaign of the Sandinistas to 'Sovietize' Nicaragua and establish a Soviet military base there similar to that in Cuba," the lawsuit states.

"By voluntarily observing the above pattern of 'Boland Amendment' type limitations on his official national defense policy in Nicaragua, the president has unreasonably abdicated his duly adopted program . . . in favor of a legislative judgment by Congress overriding his 'Contra' policy," it argues.